

ASSISTANT SURGEONS OF THE ARMY.

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LETTER

FROM

THE SECRETARY OF WAR,

TRANSMITTING

*Petitions of assistant surgeons of the Army for legislation relative to the issuance of commissions bearing their military rank.*

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FEBRUARY 16, 1885.—Referred to the Committee on Military Affairs and ordered to be printed.

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WAR DEPARTMENT,  
*Washington City, February 13, 1885.*

SIR: I have the honor to transmit to the House of Representatives a letter dated Fort Sidney, Nebr., February 2, 1885, from Capt. Clarence Ewen, assistant surgeon, United States Army, and its accompanying papers, consisting of an appeal to the House of Representatives, on behalf of himself and certain other assistant surgeons of the Army, for such legislation as will provide "that all officers of the Medical Department of the Army shall have commissions issued to them bearing their military as well as corps rank, and to relate back to the date when such rights accrued under existing laws, and to take precedence in accordance with the customs of the military service," and a draft of a bill designed to accomplish that purpose.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,  
*Secretary of War.*

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

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FORT SIDNEY, NEBR., *February 2, 1885.*

To the ADJUTANT-GENERAL, U. S. A.,

*Washington, D. C.:*

SIR: I have the honor to inclose herewith an appeal to the House of Representatives, and a bill for the relief of Captains Patzki, Corson, Dickson, Munn, and myself, assistant surgeons, U. S. A. In view of the short time during which Congress will remain in session, I would respectfully request that these papers may be forwarded at as early a date as possible.

Very respectfully, your obedient servant,

C. EWEN,  
*Captain and Assistant Surgeon, U. S. A.*

## ASSISTANT SURGEONS OF THE ARMY.

[First indorsement.]

ADJUTANT-GENERAL'S OFFICE,  
February 9, 1885.

Respectfully submitted to the Secretary of War.

C. McKEEVER,  
*Assistant Adjutant-General, in charge.*

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*To the Chairman of the Military Committee of the House of Representatives of the United States and the honorable body he represents :*

I have the honor to respectfully present the following for your consideration : At the close of the war Congress passed a law to reward medical officers of volunteers as a recognition of their services and to induce them to enter the Regular Army, directing that those who had served as assistant surgeons or surgeons of volunteers should have such time counted the same as though it had been passed in the regular service, or in the words of section 1170, Revised Statutes of the United States : "Should be "eligible for *promotion* to the grade of captain " when the three years had accrued (counting both volunteer and regular service) necessary to obtain that promotion. This was allowed, and some years ago we obtained the full recognition of our rank and seniority, and most of the ex-surgeons of volunteers had been promoted to the rank of major and surgeon in accordance with the rank and seniority thus acquired, until last year, when Congress passed a clause in the appropriation bill for the support of the Army for the fiscal year ending June 30, 1885, "that officers of the Medical Department shall take rank and precedence, in accordance with date of commission or appointment, and be so borne upon the Army Register." Advantage has been taken of this to place above us those who are junior in rank, but who entered the regular service before us. We are told that it was not the intention of the committee that framed the bill that we should be affected in this way, but this does not remedy the injustice from which we suffer. We had nothing to do with passing the law that gave us rank and precedence over those entering the service from civil life, but entering the regular service under the law thus passed we certainly counted upon it being carried out in good faith and upon protection in our rights.

If a law should be passed directing that all officers should take precedence for promotion according to the date they entered the regular service, a glance at the Army Register will show what utter disorganization would result. Still, the supplanted seniors would only find themselves in the same position in which we now are.

According to the views of the honorable Secretary of War (which I append) our rank as captain holds good for rank, pay, and precedence over all junior officers of the different branches of the service (except medical) in short for everything except promotion. To relieve us from the anomalous position in which we are placed, I would respectfully suggest an act guaranteeing our rights and those of others by issuing commissions for all the military grades of the Medical Department, instead of, as now, for only the corps grades. This would be in consonance with military usage and the spirit of the law. These commissions should relate back to the dates on which the rank occurred. The following would fully meet the needs :

*Be it enacted,* That all officers of the Medical Department of the Army shall have commissions issued to them bearing their military as well as corps rank, and to relate back to the date when such rights accrued under existing laws, and to take precedence in accordance with the customs of the military service,

Respectfully submitted on behalf of myself and others, viz :

Capt. JULIUS H. PATZKI,  
*Assistant Surgeon.*  
Capt. JOSEPH K. CORSON,  
*Assistant Surgeon.*  
Capt. J. MURRY DICKSON,  
*Assistant Surgeon.*  
Capt. CURTIS E. MUNN,  
*Assistant Surgeon.*  
C. EWEN,  
*Captain and Surgeon, U. S. A.*

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FORT SIDNEY NEBR., October 6, 1884.

Since making the foregoing protest to the honorable Secretary of War I have received the annexed memorandum, upon which I beg leave to respectfully offer the following remarks: In Dr. O'Reilly's first claim to precedence over others therein men-

tioned the expression is used "because computing their volunteer service they were held to reach the grade of captain in the Medical Corps before him." A glance at the Register will show that they were not only held to reach the grade of captain before him, but actually did so. If one law allowing credit for volunteer service holds good, so should all other acts. That the honorable Secretary of War finds it impossible to wholly rearrange medical officers on the list in the way he interprets the law, because the law is "so conflicting." As to the statement that "it is not likely that a practical question as to the relative rank of assistant surgeons with officers of other branches of the military service, will arise at one time and place as to more than one assistant surgeon," *i. e.*, that assistant surgeons will not serve together, so that the readjusted junior will be brought in contact with the supplanted senior, I beg leave to say that in 1877 I served with a detachment of troops in which was the same Dr. O'Reilly, who now claims precedence over me, en route from New York to Philadelphia and at Philadelphia.

The following list of medical officers is taken from the Army Register of 1884, and shows the relative rank and seniority of each:

1. Azpell, Thomas F., captain, 14th of May, '67 ; debarred from promotion.\*
2. Koerper, Egon A., captain, 6th of April, '68 ; promoted.
3. DeHanne, J. Victor, captain, 12th May, '68 ; next for promotion.
4. Lippincott, Henry, captain, 11th November '68; promoted.
5. McEldery, Henry, captain, 28th February, '69 ; promoted.
6. Patzki, Julius H., captain, 30th March, '69.
7. Pope, Benjamin F., captain, 13th May, '69; has not lost rank.
8. Bertholf John H., captain, 23d July, '69 ; has not lost rank,
9. Corson Joseph K., captain, 23d July, '69.
10. Dickson, John M., captain, 31st July, '69.
11. Kimball, James P., captain, 12th November, '69 ; has not lost rank,
12. Munn, Curtis E., captain, 2d December, '69.
13. Ewen, Clarence, captain, 23d December, '69.

It would be as just to arrange for promotion all the officers of the Army according to the date they entered the service instead of according to seniority and rank, as to arrange us in the manner proposed.

Respectfully submitted.

C. EWEN,

*Captain and Assistant Surgeon, U. S. A*

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*Memorandum to accompany 3572c, War Department, 1884, being a communication from R. M. O'Reilly, assistant surgeon, U. S. Army dated Washington, July 14, 1884, in which he states his claim to precedence in the Medical Department.*

Respectfully returned to the Adjutant-General.

Assistant Surgeon O'Reilly's claim to the precedence indicated by him is based on the following grounds:

1. He claims precedence over Dr. Patzki, Dr. Corson, Dr. Dickson, Dr. Munn, and Dr. Ewen, on the ground that his commission as assistant surgeon bears a date prior to theirs. They are at present borne on the Army Register above him, because, computing their volunteer service with their regular service, they were held to reach the grade of captain in the Medical Corps before him, but the present claim of Dr. O'Reilly to precedence over them is now allowed under the provisions of the act of Congress approved July 5, 1884.

2. He also claims precedence over Doctors Azpell, De Hanne, Pope, Kimball, and De Witt, bearing commissions as assistant surgeons of the same date as his, on the ground that his standing upon the examination for admission to the service was higher than theirs, and that by the Army Regulations he was, therefore, entitled to, and did rank them upon entering the service, notwithstanding the act of March 2, 1867, and he cites certain cases now shown in the Army Register as precedents.

This claim is not sustained.

The question of the relative rank of Dr. O'Reilly as affected by the act of March 2, 1867, was long ago settled, and will not be unsettled without further legislation. He suggests that the argument submitted by him, as to the weight to be given to the competitive examination, has not heretofore been considered. It may be admitted that the administrative regulation, giving preference according to the standing attained at the examination, is a good one, but it cannot stand when it comes in conflict with a positive statute, as in this case, any more than could any other regulation of similar

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\* Dr. Azpell is debarred from promotion through not having been able to pass his examination on account of ill health.

origin, e.g., one ranking the new officers of the same date of commission and appointment by their age or color, or by any other criterion which it would be within the authority of the appointing power to adopt in the absence of a positive statute. A regulation on this subject, whether made by the appointing power or by Congress may be just or unjust; the prescribed qualification may be useful or useless to the public service; but, however opinions may differ as to its propriety that made by Congress must control. It would be but a step from the nullification of the act proposed by Dr. O'Reilly to its nullification by a personal preference of the appointing power, covered by a properly devised regulation, to be changed as occasion required.

The precedents cited by Dr. O'Reilly do not help the case. A precedent for almost anything can be found in the records of the War Department, but those named will be noticed.

The order adopted in appointing the lieutenants of artillery mentioned, was, no doubt, an oversight, and was never questioned. The act of Congress requiring a different order was then new and unfamiliar, and the new officers went to their regiments in the order in which they were graduated from the Military Academy, and those now in service hold other commissions. The case of Captains Rockwell and Strang involved another question as well, and the claim of Captain Strang has been held in suspension by the Department until the question of relative rank should become one of practical moment. The retirement of Captain Strang, which took place before either of them became entitled to promotion, has rendered a further discussion of their case unnecessary.

The case of Majors Young and Carpenter was decided in accordance with the act of March 2, 1867, upon a careful computation of the length of their respective service. Major Carpenter was held upon such computation to have had longer prior service. The dates upon which the decision was based may not fully appear in the Army Register, and some omission may have misled Dr. O'Reilly.

3. Dr. O'Reilly submits the question whether he was "appointed under the act of 28 July, 1866," so as to be affected by the act of March 2 1867. He was appointed May 14, 1867, as he claims, to fill a vacancy which occurred by the resignation of an officer, February 15, 1866. The act of July 28 1866 -fixed the peace establishment of the Army and repealed all laws inconsistent with its provisions. Dr O'Reilly might, before the approval of that act, have been appointed as an assistant surgeon, under laws then unrepealed; but afterwards he could only be appointed under the new act, as it was the only law existing to which an aspirant could look for the authority for his appointment at all.

The question of Dr. O'Reilly is therefore answered in the negative.

The schedule submitted by the Adjutant-General, marked C, by which the assistant surgeons of the Army are arranged to take rank and precedence in accordance with date of commission or appointment, as required by the act approved July 5, 1884, effect being given to the provisions of the act of March 2, 1867, in the case of those having the same date of appointment and commission, is hereby approved, and they will be so borne upon the Army Register.

Special legislation as to rank of officers of the Medical Department is so conflicting as to make it impossible to use the proper arrangement of the officers as to each other in making a "relative rank list," including them with other officers of the Army, and give effect to the law which gives the rank of captain to assistant surgeons after a definite term of service. As it is not likely that a practical question as to the relative rank of assistant surgeons with officers of other branches of the military service will arise at one time and place as to more than one assistant surgeon, therefore, in order to give assistant surgeons the benefit of the rank of captain, when attained by them, in their relation to officers of the other arms of the service the "relative rank list" of the whole Army, taken together (shown at pages 342 *et seq.* of the current Army Register), will remain as now arranged in the Register, with an explanatory note directing that, to ascertain the relative rank of officers of the Medical Department among themselves, reference must be had only to that part of the Army Register relating exclusively to the Medical Department and not to this list which, as to them, is intended to show the relative rank of any particular officer of the Medical Department among the officers of the other arms of the service only.

ROBERT T. LINCOLN,  
*Secretary of War.*

WAR DEPARTMENT, *September 10, 1884.*

SCHEDULE C.—*Assistant surgeons whose status will be affected by the provisions of the act of July 5, 1884, showing the order of their rank under the new arrangement, credit being given for prior service.*

	Name.	Date of commission as assistant surgeon.	Rank by merit.	Prior service.
1	Henry Lippincott.....	Feb. 28, 1866	2	3 months, 16 days.
2	Henry McElderry.....	Feb. 28, 1866	1	None.
3	Thomas F. Azpell.....	May 14, 1867	5	4 years.
4	Egon A. Koerper.....	May 14, 1867	3	2 years, 1 month, 7 days.
5	J. Victor De Hanne.....	May 14, 1867	9	2 years, 26 days.
6	Calvin DeWitt.....	May 14, 1867	8	1 year, 2 months, 25 days.
7	Benjamin F. Pope.....	May 14, 1867	13	1 year, 1 day.
8	John H. Bartholf.....	May 14, 1867	1	11 months, 21 days.
9	James P. Kimball.....	May 14, 1867	14	6 months.
10	Henry M. Cronkhite.....	May 14, 1867	2	None.
11	Robert M. O'Reilly.....	May 14, 1867	4	None.
12	Charles L. Reizmann.....	May 14, 1867	6	None.
13	Robert H. White.....	May 14, 1867	7	None.
14	Alfred C. Girard.....	May 14, 1867	10	None.
15	Joseph B. Girard.....	May 14, 1867	11	None.
16	John V. Lauderdale.....	May 14, 1867	12	None.
17	Leonard V. Loring.....	May 14, 1867	15	None.
18	Joseph K. Corson.....	Oct. 9, 1867	2	1 year, 2 months, 19 days.
19	William J. Wilson.....	Oct. 9, 1867	1	3 months, 4 days.
20	Daniel Weisel.....	Oct. 9, 1867	3	None.
21	Julius H. Patzki.....	Nov. 11, 1867	.....	.....
22	John M. Dickson.....	Nov. 16, 1868	9	2 years, 3 months, 15 days.
23	Curtis E. Munn.....	Nov. 16, 1868	5	1 year, 11 months, 14 days.
24	Clarence Ewen.....	Nov. 16, 1868	11	1 year, 10 months, 23 days.
25	Ezra Woodruff.....	Nov. 16, 1868	6	8 months, 11 days.
26	Frederick W. Elbrey.....	Nov. 16, 1868	1	None.
27	Washington Matthews.....	Nov. 16, 1868	2	None.
28	William R. Steinmetz.....	Nov. 16, 1868	3	None.
29	John D. Hall.....	Nov. 16, 1868	4	None.
30	Philip F. Harvey.....	Nov. 16, 1868	7	None.
31	Stevens G. Cowdrey.....	Nov. 16, 1868	8	None.
32	Charles B. Byrne.....	Nov. 16, 1868	10	None.
33	Charles K. Winne.....	Nov. 10, 1874	1	12 years, 1 month, 11 days.
34	Timothy E. Wilcox.....	Nov. 10, 1874	11	1 year, 5 months.
35	Fred. C. Ainsworth.....	Nov. 10, 1874	2	None.
36	Valery Havard.....	Nov. 10, 1874	3	None.
37	John Van R. Hoff.....	Nov. 10, 1874	4	None.
38	George W. Adair.....	Nov. 10, 1874	5	None.
39	Paul R. Brown.....	Nov. 10, 1874	6	None.
40	Edward B. Mosely.....	Nov. 10, 1874	7	None.
41	John O. Skinner.....	Nov. 11, 1874	8	None.
42	James A. Finley.....	Nov. 10, 1874	9	None.
43	Augustus A. De Loffre.....	Nov. 10, 1874	10	None.
44	Louis M. Maus.....	Nov. 10, 1874	12	None.
45	Henry S. Turrill.....	June 26, 1875	4	1 year, 5 months, 6 days.
46	Curtis E. Price.....	June 26, 1875	2	1 year, 4 months, 26 days.
47	Blair D. Taylor.....	June 26, 1875	1	None.
48	James C. Worthington.....	June 26, 1875	3	None.